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ABSTRACT

Regional desegregation centers provide technical assistance and training to public school personnel and other government agencies in the areas of race, sex, and national origin desegregation, in order to provide all students with equitable opportunities to achieve educational excellence. This evaluation guide for Title IX Federal Regulations and the Civil Rights Restoration Act of 1987 contains those regulations developed to implement Title IX and poses questions as a means of ascertaining the current level of compliance of a school district with the regulations. Excerpts from "Part 106: Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance." is included along with a summary of the questions to assist in ascertaining compliance with the regulation. A request form for additional assistance from the Equity Center is appended. (NL)

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A Self-Evaluation Guide to Title IX

Applicable Excerpts from

Title IX Regulations
and
Civil Rights Restoration Act of 1987

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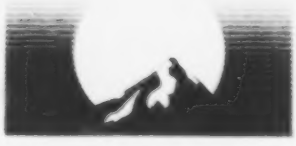

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INTRODUCTION

With passage of the Civil Rights Restoration Act of 1987, there has been renewed interest and concern with Title IX issues in the region.

This publication will provide you with the Federal Regulations that were developed to implement Title IX of the Education Amendments of 1972. As a means of assisting your district in ascertaining your current level of compliance, questions are posed opposite each regulation. Positive responses may not necessarily assure that your district is in total compliance, but should demonstrate that your district is heading in the appropriate direction. Furthermore, it is at least a minimal demonstration of compliance with the legislation.

Certainly, if your district's philosophy is that all students, regardless of sex (or race, national origin, and disability), should have access to a quality education, then you will be doing more than just minimal compliance.

Initially, you will be provided with the applicable portions of the Civil Rights Restoration Act of 1987 which legislatively reversed the Supreme Court's interpretation of the limited applicability of Title IX in the Grove City decision (1984).

Any questions you may have regarding your degree of compliance should be referred to the Office for Civil Rights. The Region H office is located in Denver, Colorado.

The **Mountain West Educational Equity Center** is available to provide technical assistance and training on Title IX issues and concerns.

AN ACT

To restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.

Be it enacted by the Senate and House of Representatives of the United States of America assembled,

SHORT TITLE

Section 1. This Act may be cited as the "**Civil Rights Restoration Act of 1987**."

FINDINGS OF CONGRESS

Section 2. The Congress finds that

(1) certain aspects of recent decisions and opinions of the Supreme Court have unduly narrowed or cast doubt upon the broad application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964; and

(2) legislative action is necessary to restore the prior consistent and long standing executive branch interpretation and broad, institution wide application of those laws as previously administered.

EDUCATION AMENDMENTS AMENDMENT

Section 3. (a) Title IX of the Education Amendments of 1972 is amended by adding at the end the following new sections:

"INTERPRETATION OF 'PROGRAM OR ACTIVITY'

"Section 908. For the purposes of this title, the term 'program or activity' and 'program' mean all of the operations of

"(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

"(1)(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

"(2)(B) **a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Act of 1965), a system of vocational education, or other school system;** [emphasis added]

"(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship

"(3)(A)(i) if assistance is extended to such corporation, partnership, private organization,or sole proprietorship as a whole; or

"(3)(A)(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

"(3)(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

"(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 901 to such operation would not be consistent with the religious tenets of such organization."

"NEUTRALITY WITH RESPECT TO ABORTION

"Section 909. Nothing in this title shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion."

Date of Regulations: May 9, 1980

Excerpts from applicable sections of

Part 106 NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

Subpart A Introduction

§106.1 Purpose and effective date.

The purpose of this part is to effectuate Title IX of the Education Amendments of 1972, as amended by Pub. L. 93-568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exemptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, as amended by Pub. L. 93-568, 88 Stat. 1855, and Sec. 844, Education Amendments of 1974, 88 Stat. 484, Pub. L. 93-380.)

Title IX regulation became effective July 21, 1975.

§106.3 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of such discrimination.

What has your district done to remedy the effects of discrimination based on sex (or race, national origin, disability), whether on a voluntary basis or based on findings of discrimination?

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

What has your district accomplished to increase the participation of students in programs or activities where there has been limited participation based on sex?

(c) *Self-evaluation.* Each recipient education institution shall, within one year of the effective date of this part:

(c)(1) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

What is the date of the last Title IX self-evaluation completed in your district?

(c)(2) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

When was your district's last review of policies and practices for discriminatory intent?

(c)(3) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

Do you have on file any of the steps taken to remedy discrimination based on sex?

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide the Assistant Secretary upon request, a description of any modifications made pursuant to paragraph (c)(ii) of this section and of any remedial steps taken pursuant to paragraph (c)(iii) of this section.

Do you have on file your most recent self-evaluation?

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 21428, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

§106.8 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee and adoption of grievance procedures.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

Who is your district's "responsible employee" or Title IX Coordinator?

How are your students and staff informed of access to the Title IX Coordinator?

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

When did your district last review and adopt Title IX grievance procedures for students and staff?

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§106.9 Dissemination of policy.

(a) *Notification of policy.*

(a)(1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Assistant Secretary finds necessary to apprise such person of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to §106.8, or to the Assistant Secretary.

How does your district inform the various groups that it does not discriminate on the basis of sex?

Is this notification done annually?

(a)(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or the date this part first applies to such recipient, whichever comes later, which notification shall include publication in: (i) Local newspaper; (ii) newspapers and magazines operated by such recipient or by student, alumnae, alumni groups for or in connection with such recipient; and (iii) memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.*

(b)(1) Each recipient shall prominently include a statement of policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(b)(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart C Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§106.21 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided §§106.16 and 106.17.

(b) *Specific prohibitions.*

(b)(1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this Subpart applies shall not:

(b)(1)(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(b)(1)(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(b)(1)(iii) Otherwise treat one individual differently from another on the basis of sex.

When did your district last publicize its non-discrimination policy?

How often is this done?

Where will you generally find this policy published?

Is there a statement of the non-discrimination policy posted in buildings and in official district documents and publications?

Is this statement available upon request?

Are materials reviewed for sex discrimination prior to dissemination?

Who is responsible for this review?

What has been done to assure that the district's admission and employment practices are non-discriminatory?

How is this policy distributed?

How does the district assure that its representatives adhere to the policy of non-discrimination?

(b)(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

If testing instruments and procedures are used, have they been reviewed to assure non-discriminatory results?

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

What is your district's policy regarding married and/or pregnant students and school attendance?

(c)(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(c)(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

Do policies reflect that pregnancy, childbirth, termination of pregnancy, and recovery are addressed as any other temporary disability?

(c)(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(c)(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

Do your employment interviewers ask about an applicant's marital status?

If yes, is this done with *all* applicants?

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart D Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

§106.31 Education programs and activities.

(a) *General.* Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.

Has your district collected and analyzed data on student completion (graduation) rates to assess whether or not there are differences among the various education programs based on sex (or race, national origin, disability)?

If there are differences, are they based on discriminatory practices?

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(b)(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(b)(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(b)(3) Deny any person any such aid, benefit, or service;

(b)(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(b)(5) Discriminate against any person in the application of any rules of appearance;

(b)(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(b)(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit, or service to students or employees;

(b)(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(Sec. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§106.33 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374)

§106.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

Are there any single-sex classes offered in the district?

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

If there are physical education classes and activities based on ability, are the assessment instruments used for such determination free of sex bias?

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§106.35 Access to schools operated by L.E.A.s.

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§106.36 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

Are school counselors trained to provide assistance to students regardless of the sex of the student?

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

When were counseling instruments and career information materials last reviewed for sex bias?

Who is responsible periodically to conduct these reviews?

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

When did the district last collect and analyze student enrollment data to determine whether or not there was disproportionate enrollment in courses?

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§106.41 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

When did the district last collect and analyze student participation data in the various athletic activities?

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

How does the district assure that athletic opportunities are available for all students?

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

When did the district last conduct an athletic interest and ability survey?

(c)(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(c)(2) The provision of equipment and supplies;

(c)(3) Scheduling of games and practice time;

Do male and female teams have the same opportunity for prime-time scheduling of games and practice times?

(c)(4) Travel and per diem allowance;

(c)(5) Opportunity to receive coaching and academic tutoring;

Do male and female athletes have access to coaches with comparable training and experience?

(c)(6) Assignment and compensation of coaches and tutors;

(c)(7) Provision of locker rooms, practice and competitive facilities;

Are the perquisites for male and female athletes comparable?

(c)(8) Provision of medical and training facilities and services;

(c)(9) Provision of housing and dining facilities and services;

(c)(10) Publicity.

Are male and female teams provided comparable access to publicity?

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

§106.42 Textbooks and curricular material.

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart E Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

§106.51 Employment

(a) *General.*

(a)(1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance.

(a)(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

How does the district ensure that its hiring practices are not discriminatory?

(a)(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this Subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

Are potential contractors and sub-contractors examined to ensure that they are non-discriminatory in practices or activities?

(a)(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex. If the giving of such preference has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of this subpart apply to:

(b)(1) Recruitment, advertising, and the process of application for employment.

Are position announcements reviewed to assure non-discrimination?

(b)(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

When were personnel policies and procedures last reviewed to assure non-discrimination?

(b)(3) Rates of pay or any other form of compensation, and changes in compensation;

(b)(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(b)(5) The terms of any collective bargaining agreement;

(b)(6) Granting and return from leaves of absence, leave for pregnancy, termination of pregnancy, childbirth, false pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(b)(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(b)(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(b)(9) Employer-sponsored activities, including social or recreational programs; and

(b)(10) Any other term, condition, or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§106.52 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§106.53 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

Has the district collected and analyzed employment data to assure patterns of non-discrimination for the various levels of positions?

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§106.54 Compensation

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

Are salary schedules based on the prerequisites of the positions?

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§106.55 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex unless sex is a bona-fide occupational qualification for the positions in question as set forth in §106.61.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§106.56 Fringe benefits

(a) *"Fringe benefits" defined.* For purposes of this part, "fringe benefits" means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of §106.54.

(b) *Prohibitions.* A recipient shall not:

(b)(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

Are fringe benefit packages reviewed to ensure non-discrimination?

(b)(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or

(b)(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§106.57 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(a)(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(a)(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recover therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§106.58 Effect of State or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§106.59 Advertising

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona-fide occupational qualification for the particular job in question.

(Secs. 901, 902, Education Amendments of 1972, 86. Stat. 373, 374; 20 U.S.C. 1681, 1682)

§106.60 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

Does the district's personnel application form ask for an applicant's marital status?

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are used in connection with discrimination prohibited by this part.

If an applicant's sex is requested, is it asked of all applicants?

(Secs. 901, 902, Education Amendments of 1972, 86. Stat. 373, 374; 20 U.S.C. 1681, 1682)

§106.61 Sex as a bona-fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other person, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

Has any position description, which is advertised for one sex or the other, been reviewed to ensure that it is a bona-fide occupational qualification?

Who is responsible for this review?

(Secs. 901, 902, Education Amendments of 1972, 86. Stat. 373, 374; 20 U.S.C. 1681, 1682)

SUMMARY

How did you do? Were you able to answer the questions posed? To summarize, see how you would answer the following questions as they relate specifically to you?

1. What is the name of your district's Title IX Coordinator?

2. How and where can you reach this individual?

3. Do you know where your district's Title IX policy is located?

4. Do you know what your district's Title IX grievance procedures are?

5. Do you know when your district last completed a Title IX self-evaluation?

6. Is your district's non-discrimination policy published annually?

7. Do you evaluate all materials used with students for bias?

8. What are you doing to encourage students from underrepresented groups to enroll in classes?

9. What are you doing to encourage individuals from underrepresented groups to apply for positions?

10. Are you generally familiar with the requirements of Title IX?

How well were you able to respond to these questions? What is your **Equity Quotient** (E.Q.)?

REQUEST FOR ASSISTANCE

The **Mountain West Educational Equity Center** is funded to assist schools with issues and concerns related to sex equity (as well as race equity and national origin equity).

Would you like assistance? Please copy this page, complete and mail it to us.

Your Name _____ **Title** _____

School District _____

School (if applicable) _____

Address _____

City _____ **State** _____ **Zip** _____

Phone (_____) _____

1. I would like assistance with the following issue(s)/concern(s) _____

_____

2. This assistance would involve:

____ conducting an assessment (e.g., needs)
____ conducting staff development (e.g., inservice, workshop)
____ conducting an evaluation (e.g., instructional program)
____ assisting with planning and implementation of equity

3. Other(s)

Mail to: **Director**
Mountain West Educational Equity Center
Weber State College
Ogden, Utah 84408-1210

Or call: **(801) 626-6650**

Please feel free to reproduce this form

Mission of

Mountain West Educational Equity Center

As mandated in the Federal regulations, regional desegregation assistance centers (DACs) exist to provide technical assistance and training at the request of superintendents, school boards, and other responsible governmental agencies in the areas of race, sex, and national origin desegregation.

The mission of the Mountain West Educational Equity Center is to help schools attain the goal of providing all students with equitable opportunities to achieve educational excellence, in keeping with the needs expressed by school districts, and in collaboration with state educational agencies (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming) in Region H (VIII).

The Mountain West Educational Equity Center is located on the campus of Weber State College in Ogden, Utah. The MWEEC may be contacted by writing:

Mountain West Educational Equity Center
Weber State College
Ogden, Utah 84408-1210

or by calling: (801) 626-6650.

Weber State College is an equal opportunity/affirmative action employer.

END

U.S. Dept. of Education

Office of Education
Research and
Improvement (OERI)

ERIC

Date Filmed

March 29, 1991